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AUTHOR Sharp, Linda A.
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ABSTRACT

This chapter includes all cases involving student-athletes, coaches, athletic directors, athletic associations, and booster organizations at both the K-12 and higher education levels. However, no case law is discussed that pertains to physical education instruction or intramural participation. The cases are discussed in the following sections: (1) eligibility; (2) equality of programs; (3) enforcement of rules; (4) tort; (5) employment; and (6) miscellaneous. (MLF)

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SPORTS

Linda A. Sharp

Introduction / 156
Eligibility / 156
- Discipline / 156
- Age / 157
- Limitations on Years of Eligibility / 157
- Transfer / 158
- Outside Participation / 158
- Drug Testing / 159

Equality of Programs / 159
- Handicapped / 159

Enforcement of Rules / 160
Tort / 160
- Intentional / 160
  - Reckless Misconduct / 160
  - Assault / 161
- Negligence / 161
  - Participants / 161
  - Spectators / 165

Employment / 166
- Adverse Employment Decisions / 166
  - Refusal to Renew Coaching Contract / 166
  - Resignation / 166
- Contract Disputes / 167
- Collective Bargaining / 168
- Unemployment Compensation / 169
- Discrimination / 169
  - Race / 169
  - Sex / 170

Miscellaneous / 170
- Taxation / 170
- Public Records / 171
- Licensing / 171
- First Amendment / 172

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INTRODUCTION

This Chapter includes all cases, at either the K-12 or higher education levels, which deal with student-athletes, coaches, athletic directors, athletic associations, and booster organizations. However, no case law is discussed which pertains to physical education instruction or intramural participation.

ELIGIBILITY

This section contains eight cases: one involved a student who was ineligible to participate because of misconduct; one was ruled ineligible because he exceeded the age restriction; one was ineligible because he exceeded the limitation on years of eligibility; two students found transfer rules objectionable; one questioned the restriction on outside participation; and two cases dealt with the issue of drug testing as a prerequisite to athletic participation.

Discipline

In a case from New Jersey, a high school football player was suspended from participating in extracurricular activities for sixty days and was put on academic suspension for ten days. He was given a *Goss* hearing for the academic suspension. His admitted offense was smoking marijuana and drinking beer on school property. The district court granted summary judgment for the school district as it held that there is no constitutionally protected property interest in playing football.[1] The Third Circuit Court of Appeals affirmed this decision on the basis that the hearing given to the student in regard to the ten day academic suspension was sufficient. Just because the sixty day athletic suspension was not mentioned specifically in the hearing does not mean that such a penalty cannot be imposed. The court found that there is no requirement in *Goss*[2] that a person know, at the time of the hearing, all the penalties that could conceivably be imposed.[3]

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1. *See* The Yearbook of Education Law 1989 at 156, Palmer v. Merluzzi, 689 F. Supp. 400 (D.N.J. 1988).
2. Goss v. Lopez, 419 U.S. 565 (1975).
3. Palmer v. Merluzzi, 868 F.2d 90 (3d Cir. 1989).

Age

A Michigan student transferred from a specialized institution for students with emotional and learning disabilities to a parochial high school. The high school athletic association rules on transfer prevented him from playing in interscholastic competition in the first academic year after transfer. The next season the student made the team as a nonstarter. Before the following season, the student was declared ineligible because he would exceed the age restriction. The Michigan High School Athletic Association (MHSAA) denied his petition for a waiver of this restriction.

In the beginning of the academic year, the student was found eligible for special education services. The individualized education plan recommended that the student participate in athletics to help his self-esteem. The student's parents sought an injunction to prevent the MHSAA from enforcing the age regulation against the student. The trial court issued a temporary restraining order and the student played in a number of basketball games. The MHSAA intended to sanction the school for allowing the student to participate. A MHSAA regulation allows sanctions to be taken against a school even though the school had permitted the participation because of a court order. The Michigan Court of Appeals found that this regulation was arbitrary, unreasonable, and unlawful. The regulation is a manifest abuse of discretion since its obvious intent is to chill any challenges to the MHSAA regulations.[4]

Limitation of Years of Eligibility

In a case out of Arizona, a student challenged the state interscholastic association's rule which denied the student an additional year of eligibility. The student believed that he should fall within that part of the rule which allows an additional year of eligibility for "illness." The student's "illness" related to incarceration in a juvenile institution after he committed burglary to get money to support his drug addiction. The Arizona Court of Appeals found that just as addiction does not excuse criminal acts neither does it make incarceration an absence due to "illness."[5] However, the Arizona Supreme Court came to a contrary resolution since the student chose to be incarcerated in order to undergo rehabilitation for his drug and alco-

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4. Cardinal Mooney High School v. Michigan High School Athletic Ass'n, 445 N.W.2d 483 (Mich. Ct. App. 1989).

5. *See* The Yearbook of Education Law 1989 at 158, Clay v. Arizona Interscholastic Ass'n, Inc., 757 P.2d 1059 (Ariz. Ct. App. 1988).

hol dependency. His absence from school, therefore, was related to an illness. The Court of Appeals' decision was vacated.[6]

Transfer

In a South Dakota case, a student-athlete transferred from a public high school to a bible academy. The bible academy was quite a distance away from his home and he resided in a dormitory at the school. Since there was no change in the parents' residence, the student was ineligible to participate in athletics for one year at the bible academy under the high school athletic association transfer rule. The student's request for a waiver of the rule was denied since he did not fit into the "hardship" exception. Although the trial court found the transfer rule to be unconstitutional, the South Dakota Supreme Court disagreed. The transfer rule is rationally related to the goal of discouraging school switching by athletes and preventing the recruiting of athletes by member schools. Furthermore, no due process is required because a student's participation in athletics is not a property interest.[7]

The parents of a handicapped student sought a preliminary injunction under the Education of the Handicapped Act (EHA) restraining the secondary school athletic association from applying a transfer rule. The student had transferred from a parochial school to a public high school and had been found, after the transfer, to have a learning disability. The Sixth Circuit Court of Appeals dismissed the suit because the parents had not exhausted the available administrative remedies for resolving disputes about a handicapped child's educational program.[8]

Outside Participation

A federal district court in Ohio was asked to decide the constitutionality of a high school athletic association rule which prohibited soccer players from participating in both spring independent soccer and fall interscholastic soccer. The plaintiff alleged that the rule violated his right of association, due process rights, and equal protection rights. In regard to the right of association, the court held that participation on an independent soccer team is not the type of private or expressive association which is constitutionally protected.

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6. Clay v. Arizona Interscholastic Ass'n, Inc., 779 P.2d 349 (Ariz. 1989).
7. Simkins v. South Dakota High School Activities Ass'n, 434 N.W.2d 367 (S.D. 1989).
8. Crocker v. Tennessee Secondary School Athletic Ass'n, 873 F.2d 933 (6th Cir. 1989).

No due process rights are necessary since participation in interscholastic athletics is a privilege. Lastly, there is no suspect classification involved and there is a rational basis to a rule which allows outside participation by athletes involved in individual sports but forbids outside participation by athletes in team sports such as soccer. Those involved in team sports could gain a distinct competitive advantage by playing "as a team" on a year round basis.[9]

Drug Testing

A track athlete at a private university brought an action against the university and the NCAA challenging the random drug testing program at the school. The action was filed in state court and the NCAA filed a petition for removal to federal court. The federal district court granted the student-athlete's motion for remand to the state court, given that there was no federal question.[10] The action was based on the Massachusetts Privacy Act and the Massachusetts Civil Rights Act.

In a continuation of this case in state court, the Supreme Judicial Court of Massachusetts found that the drug testing program did not violate the privacy statute which guarantees a right against unreasonable, substantial, or serious interference with privacy. This Massachusetts' statute has been used primarily in cases which dealt with the public dissemination of information. Since the plaintiff had not alleged that there would be public disclosure of confidential information, there was no statutory invasion of privacy.[11]

EQUALITY OF PROGRAMS

Handicapped

In a federal district court in Illinois, a handicapped student brought a section 1983 action. The student was in a wheelchair and asked the school to allow him to compete against able-bodied athletes on an equal basis in track and field. The school denied his request so the plaintiff requested a Level I hearing under the Education of Handicapped Act (EHA). The hearing officer found that the plaintiff must be allowed to participate against able-bodied athletes if he could safely do so. A multidisciplinary conference was held to

9. Burrows v. Ohio High School Athletic Ass'n, 712 F. Supp. 620 (S.D. Ohio 1988).
10. Bally v. National Collegiate Athletic Ass'n, 707 F. Supp. 57 (D. Mass. 1988).
11. Bally v. Northeastern Univ., 532 N.E.2d 49 (Mass. 1989).

address the question of whether the student could safely participate. Although the MDC participants came from a variety of disciplines none of them had any real knowledge of athletics or, more specifically, wheelchair athletics. The district court, therefore, held that the MDC was not in compliance with EHA requirements and thus violated section 1983.[12]

ENFORCEMENT OF RULES

In a New York case, a board of education and a superintendent brought an action against a nonprofit, voluntary, unincorporated association of school superintendents (Council). The Council was responsible for the formation of interscholastic athletic conferences for the public school districts of certain counties. The Council realigned the conferences and the plaintiffs objected to the league in which their school was now placed on the basis that the realignment would cause excessive travel time and increased transportation costs. The plaintiffs asked to be placed into a different league. The Supreme Court dismissed the action as it held that the primary jurisdiction for a dispute of this nature is vested in the state Commissioner of Education.[13]

TORT

In 1989 there were thirteen tort cases dealing with sport. Of these cases, two were intentional torts (i.e., reckless misconduct and assault). Of the eleven negligence cases, ten dealt with participants and one case concerned a spectator.

Intentional

Reckless Misconduct. A college ice hockey player sustained severe internal injuries after a player on the opposing team "butt-ended" the plaintiff in the abdomen. After a face-off the opposing player drove the end of his hockey stick into the plaintiff's midsection, clearly a violation of a safety rule. The trial court entered judg-

12. Hollenbeck v. Board of Educ. of Rochelle Township, 699 F. Supp. 658 (N.D. Ill. 1988).
13. Board of Educ. v. Anderson, 532 N.Y.S.2d 330 (Sup. Ct. 1988).

ment for the defendant on the basis that, although the defendant violated a safety rule, he did not act willfully, wantonly, or recklessly in doing so. The Supreme Judicial Court of Massachusetts agreed with the trial court's interpretation of this novel question in this jurisdiction. More than a mere breach of a safety rule is required to hold a participant responsible to another participant. There must be a reckless disregard of safety in order to impose liability in such a situation.[14]

Assault. A collegiate football player alleged that his coach assaulted him during a game. In a course of litigation which has spanned almost a decade, the plaintiff was unsuccessful in the suit brought in state court.[15] However, he also brought litigation in federal court under sections 1983 and 1985. The latter claim related to charges that witnesses were intimidated from truthfully testifying. The Ninth Circuit Court of Appeals dealt with the question of whether a compensable injury existed under section 1985. This cause of action requires that a claimant show that a conspiracy to intimidate witnesses hampered the claimant's ability to present an effective case in federal court. The plaintiff was unable to meet this showing because there had been no evidentiary hearing in federal court. Since no testimony had ever been taken in a federal forum, the plaintiff's claim must fail.[16]

Negligence

Participants. The defendant medical school sponsored an annual road race for faculty and students. The race was organized by the students with the full knowledge of the school's administration. The race was only 2.5 miles in length; however, the race was run on a tropical island in the late afternoon. The temperature was approximately eighty-five degrees and the humidity was high. A student participant collapsed at the finish line and subsequently died. This student was twenty-five years old and was seventy-five pounds overweight. Also, he suffered from high blood pressure and took an amphetamine before the race. The federal district court found no negligence on the part of the medical school. It had no duty to supervise this event, and even if it did, the provision of water, ice, and wet towels at the end of the race were sufficient. There was no necessity with a race of this short distance to have a doctor present. Further-

14. Gauvin v. Clark, 537 N.E.2d 94 (Mass. 1989).

15. *See* The Yearbook of Education Law 1987 at 183, Rutledge v. Arizona Bd. of Regents, 711 P.2d 1207 (Ariz. Ct. App. 1985).

16. Rutledge v. Arizona Bd. of Regents, 859 F.2d 732 (9th Cir. 1988).

more, the decedent assumed the risk. He was charged with the knowledge of his own medical condition and of the tropical conditions of the island. By entering the race, he assumed the risk of thermal injury.[17]

In a New York case, a high school girl was hurt during a game of flag football during "Spirit Week." The plaintiff alleged negligence in regard to supervision and instruction. The injured student collided with an opposing player as the opponent reached across the plaintiff's body to grab the flag. There was no evidence to support a finding of negligence since the sport was not a game of physical contact.[18]

In another New York case involving touch football, a college freshman was injured during a recreation period at a state university. The plaintiff intercepted a pass and, while trying to evade his pursuers, turned his foot in a rut, sustaining a knee injury. The Supreme Court Appellate Division found that the defendant university had met its duty of care in inspecting and maintaining the field. The duty is not to provide a perfectly level field but to use reasonable care to prevent injury. Also, there was a question of proximate cause since the knee injury could have just as easily been caused by an "evasive move" as by a rut on the field.[19]

Another football injury occurred in Idaho. A student suffered a broken leg as he tripped over sprinkler pipes on the school grounds during an informal football game held a few minutes before school began. The trial court granted summary judgment for the defendant school district as it held that the recreational use statute was applicable in this situation and thus, no duty of care was owed by the school. The Idaho Supreme Court disagreed with this interpretation of the law. The recreational use statute is not applicable because of the student's relationship to the landowner (i.e., the student is entitled to the protection of the school district). Here, we do not have just any member of the "public" using this land. Rather, the student was at the site engaged in a legitimate activity prior to classes. There is a genuine issue of material fact regarding whether the school district failed to provide proper supervision. Summary judgment was reversed.[20]

There are two more football cases which deal with injuries sustained in interscholastic competition. In the first case, from Louisi-

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17. Gehling v. St. George's Univ. School of Medicine, 705 F. Supp. 761 (E.D.N.Y. 1989).
18. Buckvar v. Syosset Cent. School Dist., 538 N.Y.S.2d 563 (App. Div. 1989).
19. Drew v. State, 536 N.Y.S.2d 252 (App. Div. 1989).
20. Bauer v. Minidoka School Dist. No. 331, 778 P.2d 336 (Idaho 1989).

ana, an injured high school football player brought suit against the Louisiana High School Athletic Association. The player attempted to hold the association responsible for the alleged negligence of the game officials in allowing violent and unsportsmanlike conduct to continue unchecked. As a result of this excessively rough play, the student suffered a serious neck injury. The issue is whether the referees can be considered to be the agents of the LHSAA. Although the LHSAA gives a rules test and registers officials, it does not "control" officials to the degree that officials may be considered agents of the LHSAA. Also, the LHSAA did not have any knowledge that this particular school was continually engaging in unsportsmanlike behavior and therefore, had no duty to intervene.[21]

The final football case had to do with the question of mismatched participants. The team on which the injured student participated had a very poor record. The principal of the school had requested that his team be assigned to a less competitive division because it was clear that his football team was outmatched. However, the league supervisor denied the request. On the day of the injury, the student's team was playing a vastly superior team. The principal and the coach had discussed refusing to play this game because it had a high risk of injury. Nevertheless, the game was played, and the student, who had played virtually every down because of a lack of qualified replacements, was injured near the end of the first half. The student prevailed at the state supreme court level. Upon appeal, the lower court decision was affirmed. The school unreasonably enhanced the risk of injury to the student by playing this contest which clearly had a high risk of injury.[22] The New York Court of Appeals disagreed. First, the trial court erroneously instructed the jury that the school board owed the standard of care of a prudent parent, a duty of care which was beyond ordinary reasonable care. Second, the student assumed the risk of injury because he was not under an "inherent compulsion" to play (i.e., he was not able to show that he had no choice but to follow the coach's direction to play despite his concern over enhanced risk factors).[23]

In a case out of Louisiana, an athletic team manager sustained a severe leg injury, necessitating the amputation of his leg. The fourteen year old student was in the process of using an extractor, a powerful piece of equipment which has a spin cycle similar to a washing

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21. Harvey v. Ouachita Parish School Bd., 545 So. 2d 1241 (La. Ct. App. 1989).
22. *See* The Yearbook of Education Law 1989 at 164, Benitez v. New York City Bd. of Educ., 530 N.Y.S.2d 825 (App. Div. 1988).
23. Benitez v. New York City Bd. of Educ., 543 N.Y.S.2d 29 (1989).

machine. He was in a hurry to get the uniforms ready for a game and became distressed when the extractor did not stop spinning after it had been turned off. The student attempted to stop the machine by putting his hand on a stop lever at the side of the extractor. However, the machine continued to spin, so the student climbed upon the extractor to use his foot on the lever. His leg, however, ended up in the machine. This student had been warned never to reach into the machine while it was still spinning and he knew that this equipment was capable of causing severe injuries. The trial court denied recovery to the student on the basis of contributory negligence. Initially, the Louisiana Court of Appeals agreed with this result. However, upon rehearing, the court found that a minor labor law applied which prohibited minors under the age of sixteen from working "in, or about, or in connection with power-driven machinery." Although the school-student relationship was not an employer-employee situation, the court found that the statute was applicable because the activity was fundamentally voluntary and extracurricular. Furthermore, since the statute was applicable, the student's actions did not bar recovery. The statute contemplates that a minor might not be able to act prudently in all situations which involve the use of power-driven machinery. The matter was reversed and a judgment of $521,600 was rendered.[24]

A high school wrestler sustained multiple lacerations when his hand went through a window in a school hallway. The hallway was used for sprinting drills. At the trial level, the defendant's motion for summary judgment was granted on the basis of immunity. The Pennsylvania Commonwealth Court, however, reversed because the claim alleges a defective condition of real property, an exception to immunity. Summary judgment is not appropriate because there is a genuine question as to whether the failure to install shatterproof glass is a dangerous condition (defect) because the realty was regularly used for wrestling practice.[25]

In a case out of Tennessee, a mentally handicapped student was injured in a YMCA pool as he trained for the Special Olympics. The student, who was twenty years old and severely retarded, went with his special education class to the YMCA pool. The training sessions were supervised by a teacher, a teacher's aide, and a YMCA lifeguard. At the end of the session, the student was found lying on the floor of the pool. After being resuscitated by the lifeguard, the student was admitted to the hospital. The teacher admitted that she

24. Byrd v. Bossier Parish School Bd., 543 So. 2d 35 (La. Ct. App. 1989).
25. Gump v. Chartiers-Houston School Dist., 558 A.2d 589 (Pa. Commw. Ct. 1989).

was working with the student at the end of the session, that she told him to get out of the pool, and that she did not actually see him get out of the pool. The trial court rendered judgment for the defendants. The Tennessee Court of Appeals found that the evidence did not support such a judgment and reversed. Also, in regard to the waiver which was signed by the student's mother, the court found that, although the exculpatory clause was not prohibited by public policy, the mother was unable to waive the rights of her incompetent son.[26]

A cheerleader sued the school district for spinal injuries sustained as she fell during a free period at a summer cheerleading camp. The cheerleaders were practicing a cheer which involved a pyramid formation which was not a routine learned at the camp. The cheerleading camp was operated by an entity with no connection to the school district. The funds to attend were raised by the cheerleaders and the only active participation by the school district involved the provision of a bus to transport the girls to the camp. The cheerleader advisor attended the camp at her own expense and with no contractual obligation to do so. The trial court granted summary judgment for the school district and the Montana Supreme Court affirmed. Under the facts of this case, there was no duty owed by the school district to the injured student.[27]

Spectators. In a Pennsylvania case, a spectator, who was waiting in a refreshment line at halftime of an interscholastic football game, was knocked to the ground. She was hit by a football player who was leading his team from the visitor's lockerroom back to the field. The plaintiff alleged negligence by the player and by the school district in placing the concession stand in close proximity to the locker room. In regard to the player, the Pennsylvania Commonwealth Court found that he was immune. Although the student is not an employee of the school district, the statutory definition of employee is broad enough to encompass a high school athlete who is acting "on behalf of the school district" in playing football. Since his actions were within the scope of his duties, he is immune. In regard to the alleged negligence of the school district, the "misplacement" of a lockerroom is not a defect in the real property; therefore, the real property exception to immunity is inapplicable. Summary judgment for the defendants was affirmed.[28]

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26. Childress v. Madison County, 777 S.W.2d 1 (Tenn. Ct. App. 1989).
27. Rollins v. Blair, 767 P.2d 328 (Mont. 1989).
28. Wilson v. Miladin, 553 A.2d 535 (Pa. Commw. Ct. 1989).

EMPLOYMENT

Ten cases which dealt with employment issues were decided in 1989. Three of those cases involved adverse employment decisions, two concerned contract disputes, one related to a collective bargaining issue, one case dealt with unemployment compensation, two cases pertained to race discrimination, and one case involved a sex discrimination claim.

Adverse Employment Decisions

Refusal to Renew Coaching Contract. In a case out of North Dakota, the contract of a girls' volleyball coach was not renewed. Also, the school board refused to renew the contract of the head boys' basketball coach/athletic director. In regard to the latter position, the athletic director had his teaching salary reduced by one-seventh. The plaintiffs filed for a writ of mandamus to require the school board to follow statutory nonrenewal procedures. The Supreme Court of North Dakota held that the statutory nonrenewal procedures were clearly inapplicable to the coaching assignments because they were extracurricular. However, in regard to the athletic director position, the nonrenewal procedures must be followed since those responsibilities were intertwined with curricular duties. As support for this stance, the court noted the reduction in teaching salary which accompanied the removal of the athletic director assignment.[29]

In an Oklahoma case, a tenured teacher was relieved of his coaching assignment. This particular school district had entered into a collective bargaining agreement which required that the nonrenewal of coaching assignments be subject to binding arbitration. The teacher brought an action in mandamus to require the arbitration procedure to be enforced. The Oklahoma Supreme Court found that the arbitration clause conflicted with the legislative mandate that a decision regarding the extra-duty assignments of a teacher is not bargainable. The assignments are a policy determination of the board and it is beyond the power of the board to bind itself to arbitrate in such a situation. The arbitration clause cannot supersede the nondelegable and exclusive authority to fix teachers' duties.[30]

Resignation. Since 1977, a high school physical education teacher had performed extensive extracurricular duties. She

29. Coles v. Glenburn Pub. School Dist. No. 26, 436 N.W.2d 262 (N.D. 1989).
30. Mindemann v. Independent School Dist. No. 6 of Caddo County, 771 P.2d 996 (Okla. 1989).

coached volleyball for ten seasons and softball for four years. She also served as a class sponsor four times and monitored the cheerleading squad and pep club on two occasions. For the 1986-87 school year this teacher was again assigned to coach both volleyball and softball. She attempted to resign her volleyball coaching position on the basis that these extensive assignments were imposing a hardship on her family life. The school district refused to accept her resignation. The trial court found that the school district abused its discretion in refusing to allow the teacher to resign one of the coaching positions. The Illinois Court of Appeals affirmed this decision as it held that the school district cannot assign someone to extra duties which are unreasonable or overly burdensome. In view of this teacher's total work load, it was unreasonable not to allow her to resign from the volleyball coaching assignment.[31]

Contract Disputes

The defendant operated the Illini Sports Network which broadcast the University of Illinois intercollegiate athletic events. In May 1985, the defendant orally agreed that the plaintiff would sell advertising time on the Illini Sports Network for the 1985-86 and 1986-87 athletic seasons. The plaintiff was responsible for collecting payments from the advertisers and then turning the funds over to the defendant after deducting a 15% commission. In February 1986 the defendant terminated the agreement. At that time, the plaintiff had sold all the advertising for the 1985-86 season and had been selling the advertising for the 1986-87 season since November 1985. After the plaintiff sued the defendant for breach of contract the defendant moved for summary judgment arguing for the applicability of the Illinois statute of frauds provision that a contract which is not to be performed within one year from the making thereof is unenforceable unless it is in writing. The federal district denied the motion for summary judgment because the performance of all duties under the contract *could* have been completed within one year.[32]

In a Colorado case, a junior high school basketball coach sued the high school coach and the school district for defamation, outrageous conduct, invasion of privacy, and breach of contract after he lost his employment. The plaintiff worked as an assistant boys' basketball coach at the junior high school. During the summer of 1985,

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31. Lewis v. Board of Educ. of N. Clay Community Unit School Dist. No. 25, 537 N.E.2d 435 (Ill. App. Ct. 1989).

32. Sports/Media Sales Co. v. Rasmussen, 691 F. Supp. 156 (N.D. Ill. 1988).

the head basketball coach at the high school asked the plaintiff to serve as the assistant coach at the high school for the next season. The plaintiff accepted but his employment was never approved by the school board. Shortly thereafter, the high school coach confronted the plaintiff about a rumor that he had been implicated in a child molesting incident a number of years ago. The plaintiff chose to resign or the high school coach would have fired him. The plaintiff also lost his position at the junior high school after the head coach expressed concern that the plaintiff have no contact with his son. The head coach told others that the plaintiff was a "child molester" and showed court records which indicated that the plaintiff had plead *nolo contendere* to a charge of attempted assault on a child under the age of sixteen. At the trial court, summary judgment for the defendants was granted. The Colorado Court of Appeals affirmed. There was no defamation because the statements made were substantially true. The plaintiff could not prevail on a cause of action based on outrageous conduct because the defendants' conduct was not atrocious and utterly intolerable. The invasion of privacy claim failed because the plaintiff's criminal records were public and they did not lose their public character through the passage of time. Finally, the power to employ a coach is given exclusively to the school board and this power cannot be delegated. The plaintiff is charged with the knowledge that he was not hired unless the school board had approved his appointment.[33]

Collective Bargaining

In Indiana, the Education Employment Relations Board decided that the athletic director, head football coach, and head basketball coach were supervisors, and thus, excluded from the bargaining unit. The plaintiff education association sought judicial review of this determination, which was upheld by the circuit court. In applying the applicable statutory language, the Indiana Court of Appeals held that a supervisor is one who has authority over school employees (who are defined as certificated persons). In Indiana, there is no absolute requirement that coaches be certificated. Therefore, sometimes the athletic director and head coaches may make hiring and promotion decisions regarding persons who are not "employees." The court held that *if* the athletic director and coaches supervise

33. Lindemuth v. Jefferson County School Dist. R-1, 765 P.2d 1057 (Colo. Ct. App. 1988).

full-time certificated employees then they are to be considered supervisors under the statute.[34]

Unemployment Compensation

The plaintiff was employed as a teacher and coach. His coaching responsibilities were withdrawn but he continued to teach in the 1987-88 academic year. In March 1988 the superintendent recommended that the plaintiff resign. The plaintiff did so and then tried to collect unemployment benefits. The Supreme Court of North Dakota held that a resignation in anticipation of a discharge does not entitle the plaintiff to collect unemployment benefits.[35]

Discrimination

Race. In Texas, white and Hispanic football coaches brought a section 1983 action after they were reassigned from the varsity football team to the sophomore football team so that black coaches could be appointed to the varsity staff. The federal district court held that this reassignment violated the equal protection clause and plaintiffs' motion for summary judgment was granted. The defendant argued that its decision was constitutionally permissible to maintain racial integration among its coaching staffs. The court cited *City of Richmond v. J.A. Croson*[36] for the proposition that assertions of past societal discrimination are insufficient to justify the remedial use of race-based classifications. Once a school system is integrated, as is the case here, the prior discrimination has been cured and race-based classifications are no longer remedial of pre-unitary violations. Thus, the simple fact that the varsity team was 80% black yet had no black coaches was an insufficient justification for the plaintiffs' reassignments.[37]

In another race discrimination case which originated in Texas, a white coach, a minority at his school, brought a race discrimination suit. The Fifth Circuit Court of Appeals ruled that the plaintiff had established a prima facie case of discrimination. It also ruled that respondeat superior was inapplicable in a section 1981 claim to impose liability upon the school district.[38] The court denied the athletic di-

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34. Lawrence Township Educ. Ass'n v. Indiana Educ. Employment Relations Bd., 536 N.E.2d 563 (Ind. Ct. App. 1989).

35. Six v. Job Serv. N.D., 443 N.W.2d 911 (N.D. 1989).

36. City of Richmond v. J.A. Croson Co., 109 S. Ct. 706 (1989).

37. Covington v. Beaumont Indep. School Dist., 714 F. Supp. 1402 (E.D. Tex. 1989).

38. *See* The Yearbook of Education Law 1987 at 193, Jett v. Dallas Indep. School Dist., 798 F.2d 748 (5th Cir. 1986).

rector's and coach's motion for a rehearing thus reaffirming its position regarding respondeat superior.[39]

The Supreme Court affirmed that portion of the appellate court's opinion regarding section 1981 liability. A municipality may not be held liable for its employees' violations of section 1981 under respondeat superior.[40] Express "action at law" under section 1983 provides the exclusive federal damages remedy for the violation of rights guaranteed by section 1981 when the alleged violation is by a state actor.[41]

Sex. In a case originating in Arkansas, a female academic coordinator for a university athletic department was discharged. She brought a title VII action which was not upheld by the federal district court.[42] The Eighth Circuit Court of Appeals affirmed the decision on the basis that the plaintiff had not produced credible evidence of discrimination. There were a number of problems in her work including the improper monitoring of eligibility and poor faculty relations. The reasons given by the university for her discharge were not a pretext for discrimination.[43]

MISCELLANEOUS

Taxation

A university brought an action seeking relief from real estate taxes under the statutory exemption for school property. The property in question consisted of nine outdoor tennis courts, a clubhouse, and locker rooms. The university-owned courts were leased to a private tennis club which paid an annual fee and maintained the courts. The university's use was limited to a fixed number of hours for use by physical education classes and the intercollegiate tennis teams. Other students paid fees to the tennis club to use the courts. Under Illinois law, a property used for more than one purpose must be used *primarily* for an exempt purpose. That was not the case here

39. *See* The Yearbook of Education Law 1989 at 171, Jett v. Dallas Indep. School Dist., 837 F.2d 1244 (5th Cir. 1988).
40. Jett v. Dallas Indep. School Dist., 109 S. Ct. 2702 (1989).
41. *Id.* at 2722.
42. *See* The Yearbook of Education Law 1988 at 193, Gray v. University of Ark. at Fayetteville, 658 F. Supp. 709 (W.D. Ark. 1987).
43. Gray v. University of Ark. at Fayetteville, 883 F.2d 1394 (8th Cir. 1989).

because the private club's use (a nonexempt use) exceeded the university's use for exempt purposes.[44]

Public Records

In an Oregon case, a newspaper publisher brought an action under the public records law to have a school district divulge the names and addresses of coaches it hired as replacements during a strike. The replacement coaches had been promised that their personal data would be kept confidential. The Oregon Court of Appeals held that the names of the replacement coaches must be disclosed. Coaches in public schools are not anonymous nor are they entitled to be. Furthermore, just because names are in the personnel files does not mean that they become confidential information. A public body cannot make otherwise public information confidential by placing it in a personnel file. However, the addresses were submitted to the school district in confidence and may reasonably be considered information which is confidential. Therefore, the addresses were exempt from disclosure.[45]

The university coach of a women's basketball team resigned under rather curious circumstances. He resigned just a few months after signing a three year reappointment contract. Therefore, the publisher of the local newspaper sought disclosure of information regarding this incident under the Freedom of Access Act. The university submitted a settlement agreement which it had entered into with the coach for *in camera* review by the trial court. The court ordered disclosure of the entire agreement. The Supreme Judicial Court of Maine affirmed the judgment with the exception that one sentence relating to the coach's medical condition must be deleted before disclosure.[46]

Licensing

The University of North Carolina at Chapel Hill began a licensing program for its merchandise which bore the university name, symbols, and insignia. Much of the merchandise related to the athletic teams which are known as the "Tarheels." The university sued a local retail outlet for trademark infringement. The defendant argued that the university had abandoned its marks because it did not

44. De Paul Univ., Inc. v. Rosewell, 531 N.E.2d 884 (Ill. App. Ct. 1988).
45. Guard Publishing Co. v. Lane County School Dist. No. 4J, 774 P.2d 494 (Or. Ct. App. 1989).
46. Guy Gannett Publishing Co. v. University of Me., 555 A.2d 470 (Me. 1989).

prosecute trademark infringers before 1982. The federal district court disagreed with the defendant's argument regarding abandonment. Furthermore, defendant's counterclaim under the Sherman Act was foreclosed because of sovereign immunity.[47]

First Amendment

A member of a school's marching band complained to the principal about the invocations delivered prior to the home football games. They were given by Protestant ministers and they were clearly prayers. The football games were school-sponsored and the games were played at a stadium owned by the school system. After the plaintiff complained, the school instituted an "equal access" plan whereby all school clubs could designate club members to give invocations or school staff members could seek to deliver an invocation. This plan was unsatisfactory to the plaintiff and he brought suit in federal district court. The district court held that the invocations were unconstitutional but that the "equal access" plan was constitutional on its face. The Eleventh Circuit Court of Appeals found that the "equal access" plan violated the establishment clause of the first amendment under *Lemon v. Kurtzman.*[48] There was no secular purpose for adopting the plan; it was express support for Protestant Christianity. Even if the plan was found to have a secular purpose, the invocation clearly conveyed a message that the school endorsed the religious invocation. The Circuit Court of Appeals did agree with the district court, however, that the invocations violated the establishment clause.[49]

47. Board of Governors v. Helpingstine, 714 F. Supp. 167 (M.D.N.C. 1989).
48. Lemon v. Kurtzman, 403 U.S. 602 (1971).
49. Jager v. Douglas County School Dist., 862 F.2d 824 (11th Cir. 1989).